MARIJUANA-RELATED PROVISIONS

1. MEDICAL MARIJUANA OVERSIGHT AND REGULATION

A. Agriculture, Trade and Consumer Protection

Licensing of Cultivation, Dispensaries, and Testing Laboratories

Governor: Create a program within the Department of Agriculture, Trade and Consumer Protection's (DATCP) Division of Agricultural Resource Management that authorizes, licenses, and regulates dispensaries and other entities involved in the provision of cannabis and tetrahydrocannabinols (THC) for medical purposes within Wisconsin. Funding and positions related to the program are shown in an entry under "Agriculture, Trade and Consumer Protection."

a. *Dispensaries and Cultivation.* Define dispensary as a licensed entity that cultivates, acquires, manufactures, possesses, delivers, transfers, transports, sells, or dispenses cannabis, THC, paraphernalia, or related supplies and educational materials to treatment teams and other dispensaries. Provide that a dispensary may have two locations, one for cultivation or production, and one for distribution. Allow dispensaries or other entities authorized by Department rule and policy to cultivate cannabis, both indoors and outdoors. Require DATCP to provide licensing, regulation, record keeping, and security for dispensaries. "Security" is not defined, but the administration indicates it intends for DATCP to develop security guidelines with which dispensaries must comply to ensure the safety of the facility and proper controls over inventory. In addition to dispensaries, allow other entities authorized under Department rule and policy to possess, manufacture, deliver, and distribute THC for the purposes of supplying a dispensary. Require DATCP to develop such policies and security guidelines to authorize and regulate suppliers to grow and distribute cannabis and THC to dispensaries. Specify that any policies developed under this provision do not constitute rules for the purposes of administrative procedure and review, including as they pertain to rulemaking requirements under s. 227.10 stats.

b. *Licensing.* Require DATCP to issue dispensary licenses, but allow the Department to determine which and how many dispensaries receive a license. Specify that the Department will consider all of the following in its provision of licenses: (a) convenience and preference of caregivers and patients; (b) the ability of an applicant to provide sufficient quantities of THC; (c) the experience an applicant has in management of a nonprofit or business; (d) the preferences of local governments with jurisdiction in the applicant's area; (e) the ability of an applicant to keep records confidential and maintain a safe and secure facility; and (f) the ability of an applicant to abide by license requirements.

Prohibit the licensure of a dispensary that: (a) is located within 500 feet of an elementary or secondary school; (b) distributes cannabis or THC in a manner that results in the patient or primary caregiver possessing more than the legally allowable amount of 12 live cannabis plants or 3 ounces of usable cannabis at any given time; (c) possesses more plants or usable cannabis than the sum of all legally allowable amounts for any patients that are customers of the dispensary, plus an

acceptable amount, as determined by DATCP rule. Additionally, limit dispensary licenses to current residents of Wisconsin who have resided here for at least two years.

Require application for a dispensary license to be in writing on a form created by the Department. Specify that DATCP must approve or deny an application for a dispensary license within 60 days of receipt. Establish initial application and recurring annual fees for operation of a dispensary as determined by the Department, but not less than $250 and $5,000, respectively. Specify that a dispensary license is valid unless revoked. Further, specify that the license is only valid for use by the original applicant, and is not transferable or assignable to any other person.

c. Testing Laboratories. In addition to regulating dispensaries, require DATCP to register THC testing laboratories. Specify that such laboratories may possess and manufacture THC and drug paraphernalia. Further, require that such laboratories: (a) test cannabis and THC produced for dispensaries for potency, mold, fungus, pesticides, and other contaminants; (b) research findings related to medications that use THC, including any findings that identify potentially unsafe levels of contaminants; and (c) provide training to patients, caregivers, dispensary employees, and cultivators of cannabis and THC on: (1) the safe and efficient cultivation, harvest, packaging, labeling, and distribution of cannabis and THC; (2) security and inventory accountability procedures; and (3) the most recent research on medication with THC.

d. Distribution of Medical THC. Allow a dispensary to possess and manufacture THC and drug paraphernalia with an intent to deliver to a patient or primary caregiver. Allow a dispensary to distribute THC and drug paraphernalia to patients and primary caregivers, but require: (a) distribution to occur face-to-face; (b) that the dispensary receive a copy of the patient's written certification from a physician or otherwise authorized practitioner, or registry identification card provided by the Department of Health Services; and (c) that the THC is sourced from cannabis grown in Wisconsin as authorized by the Department. Require dispensaries to test all produced THC and cannabis for mold, fungus, pesticides, and other contaminants. Prohibit dispensaries from distributing THC or cannabis that contains mold, fungus, pesticides, or other contaminants if their concentration is identified by testing laboratories as being potentially unsafe for a patient's health.

e. Prohibition on Local Control. Specify that no town, village, city, or county may enact or enforce an ordinance or resolution that prohibits cultivation of THC or cannabis if the cultivation is by: (a) a dispensary licensed by the Department; (b) a person cultivating THC for medical use by themselves or the person for whom they are a primary caregiver in an amount not exceeding the legal amount of 12 live plants; or (c) a supplier that cultivates cannabis to distribute to a dispensary, as authorized under DATCP policy and promulgated rules.

f. Confidentiality. Specify that DATCP may disclose to a law enforcement agency only the information necessary to verify compliance of dispensaries, suppliers, testing laboratories, or other authorized entities with state law and Department rules and policy.

g. Rules. Allow DATCP to promulgate rules to administer its medical marijuana program. Provide that DATCP may promulgate emergency rules that would remain in effect until January 1, 2023, or the date on which permanent rules take effect, whichever is sooner. For the purposes of rulemaking under this provision, exempt the Department from the current law requirement to present evidence and determine emergency rulemaking is necessary for the public

peace, health, safety, or welfare.

h. *Funding.* Provide $35,000 GPR in 2019-20 and $150,700 PR annually with 1.5 PR positions to DATCP for licensing and regulatory functions. The fiscal estimate prepared by the Department of Health Services for 2017 Assembly Bill 482, which creates a comparable fee structure for dispensaries, estimates 10 dispensaries would be created in Wisconsin. Based on this estimate, application and annual licensing fees would be expected to generate at least $52,500 PR in 2019-20 and $50,000 PR in 2020-21 and annually thereafter.

Joint Finance/Legislature: Delete provision.

B. Health Services

Medical Cannabis Registry

Governor: Create a medical cannabis registry program administered by the Department of Health Services (DHS), Division of Quality Assurance. Funding and positions relating to the program are summarized under "Health Services -- Departmentwide and Quality Assurance."

a. *Application for a Registry Identification Card.* Specify that an adult claiming to be a qualified patient may apply for a registry identification card by submitting to DHS all of the following: (a) a signed application form that contains the applicant's name, address, and date of birth; (b) a written certification; (c) the name, address, and telephone number of the applicant's current practitioner, as listed in the written certification; (d) a registration fee determined by DHS, but not less than $100; and (e) any information that DHS determines is necessary for a background check.

Specify that a person who is at least 21 years of age may apply for a card as a primary caregiver by submitting to DHS all of the following information: (a) a signed application form that contains the applicant's name, address, and date of birth; (b) a copy of a written certification or copy of a registration identification card for each qualifying patient for whom the applicant will be the primary caregiver; (c) a registration fee determined by the Department, but not less than $100; and (e) any information that DHS determines is necessary for a background check.

Require DHS to convey the information provided by an applicant to the Department of Justice, which must conduct a background check on the applicant. The background check must determine if the applicant has been convicted of a violent felony under state or federal law. If DOJ determines that the applicant has been convicted of such an offense, DHS must deny the application unless at least ten years has passed since the completion of any sentence imposed for the offense.

Require DHS to promulgate rules specifying how a parent, guardian, or person having legal custody of a child may apply for a registry identification card for the child and the circumstances under which DHS may approve or deny the application.

b. *Processing the Application*. Require DHS to verify the information submitted by an applicant to the registry and approve or deny the application within 30 days of receipt. Specify that

DHS may deny an application only if one of the following applies: (a) the applicant did not provide the required information or provided false information; (b) the applicant failed the background check; or (c) DHS is required to deny the application based on the rules it promulgated for applications for parents, guardians, or person's having legal custody of a child.

c. Issuance of a Registry Identification Card. Require DHS to issue a registry identification card within five days of approving an application. Specify that a registry identification card expires two years from the date of issuance. Specify that a registry identification card must contain all of the following information: (a) the name, address, and date of birth of the registrant and each primary caregiver or qualifying patient, if applicable; (b) the date of issuance and expiration of the card; (c) a photograph of the registrant; and (d) other information DHS may require by rule.

d. Fees and Additional Information to Be Provided By Registrant. Specify that primary caregivers must pay an annual fee determined by DHS, but not less than $250. Create a program revenue appropriation in DHS that would enable DHS to expend all moneys it receives to administer the registry program.

Require an adult registrant to notify DHS of any change in the registrant's name and address. Specify that an adult registrant who is a qualifying patient must notify DHS of any change in his or her practitioner, of any significant improvement in his or her health as it relates to his or her debilitating medical condition or treatment, and if a primary caregiver stops helping the registrant in the registrant's medication with tetrahydrocannabinols (THC). Require a registrant who is a primary caregiver to notify DHS if the registrant becomes a primary caregiver for an additional qualifying patient, and must include with the notice a copy of a written certification or copy of a registration identification card for each additional qualifying patient.

Specify that if a qualifying patient is a child, a primary caregiver for the child must provide DHS with any information that the child, if he or she were an adult qualifying patient, would have to provide above within ten days after the date of the change to which the information relates.

Specify that is the registrant fails to notify DHS within ten days of any change for which notification is requires, his or her registry identification card is void. Provide that if a qualifying patient's registry identification card becomes void, the registry identification card for each of the qualifying patient's primary caregivers with regard to that qualifying patient is void. Require DHS to send written notice of this fact to each such primary caregiver.

e. Definitions. For the purposes of the registry, define a "qualifying patient" as a person who has been diagnosed in the course of a bona fide practitioner-patient relationship as having or undergoing a debilitating medical condition or treatment.

Specify that a qualifying patient may be under the age of 18 only if the person's practitioner has explained the potential risks and benefits of medication with THC to the person and to a parent, guardian, or person having legal custody of the person, and the parent, guardian, or person having legal custody provides the practitioner a written statement consenting to do all of the following: (a) allow medication with THC for the person; (b) serve as a primary caregiver for the person; and (c) manage the person's medication with THC.

Define a "debilitating medical condition or treatment" as any of the following: (a) cancer, glaucoma, acquired immunodeficiency syndrome, a positive test for the presence of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV, Crohn's disease, a hepatitis C virus infection, Alzheimer's disease, amytrophic lateral sclerosis, nail-patella syndrome, Ehlers-Danlos Syndrome, post-traumatic stress disorder, or the treatment of these conditions; (b) opioid abatement or reduction or treatment for opioid addiction; (c) a chronic or debilitating disease or medical condition or the treatment of such a disease or condition that causes cachexia, severe pain, severe nausea, seizures, including those characteristic of epilepsy, or severe and persistent muscle spasms, including those characteristic of multiple sclerosis; and (d) any other medical condition or any other treatment for a medical condition designated as a debilitating medical condition or treatment as determined by DHS.

Define a "practitioner" as a physician, advanced practice nurse, a physician assistant, or other person licensed, registered, certified, or otherwise permitted to distribute, dispense, conduct research with respect to, administer or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in this state.

Define a "bona fide practitioner-patient relationship" as a relationship between the practitioner and the patient that includes all of the following: (a) an assessment of the patient's medical history and current medical condition by the practitioner, including an in-person physical examination if appropriate; (b) a consultation between the practitioner and the patient with respect to the patient's debilitating medical condition or treatment; and (c) availability by the practitioner to provide follow-up care and treatment to the patient, including patient examinations.

Define a "written certification" as a statement written by a person's practitioner for which all of the following apply: (a) it indicates that, in the practitioner's professional opinion, the person has or is undergoing a debilitating medical condition or treatment and the potential benefits of medication with THC would likely outweigh the health risks for the person; (b) it indicates that this opinion was made in the course of a bona fide practitioner-patient relationship; and (c) it is signed by the practitioner or is contained in the person's medical records.

Define "medication with THC" as any of the following: (a) the use of THC in any form by a qualifying patient to alleviate the symptoms or effects of the qualifying patient's debilitating medical condition or treatment; (b) the acquisition, possession, cultivation, or transportation of THCs in any form by a qualifying patient if done to facilitate his or her use of the THC; or (c) the acquisition, possession, cultivation, or transportation of THC in any form by a primary caregiver of a qualifying patient, the transfer of THC in any form between a qualifying patient and his or her primary caregivers, or the transfer of THC in any form between persons who are primary caregivers for the same qualifying patient if all of the following apply: (i) the acquisition, possession, cultivation, transportation, or transfer of the THC is done to facilitate the qualifying patient's use of THC; and (ii) it is not practicable for the qualifying patient to acquire, possess, cultivate, or transport the THC independently, or the qualifying patient is under 18 years of age.

f. Records. Require DHS to maintain a list of all registrants. Prohibit DHS from disclosing information from applications it receives or registration cards that it issues. Permit DHS to disclose, upon request of a law enforcement agency, only information necessary to verify that a person possesses a valid registry identification card.

g. Rules. Authorize DHS to promulgate rules to implement the registry program. Authorize DHS to promulgate emergency rules that would remain in effect until January 1, 2023, or the date on which permanent rules take effect, whichever is sooner, without meeting general statutory requirements relating to the promulgation of emergency rules.

h. Consideration of Registry Status in Determinations of Child Custody. Specify that in determining legal custody and periods of physical placement, and in all actions to modify legal custody or physical placement orders, the court may not consider as a factor in determining the legal custody of a child whether a parent or potential custodian holds, or has applied for, a registry identification card, is or has been the subject of a written certification, or is or has been a qualifying patient, or a primary caregiver, unless the parent or potential custodian's behavior creates an unreasonable danger to the child that can be clearly articulated and substantiated.

i. Funding and Positions. Provide $440,000 GPR in 2019-20 and $400,600 PR annually and 4.0 PR positions to DHS for administration of the registry.

Joint Finance/Legislature: Delete provision.

C. Restrictions by Employers and Non-Discrimination in Housing

1. Employment Law

Governor: Specify that no employer is required to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or cultivation of medication with THC or usable cannabis in the workplace, and any employer may have a policy restricting the use of marijuana by its employees.

Joint Finance/Legislature: Delete provision.

2. Fair Housing Laws and Wisconsin Housing and Economic Development Authority Assistance

Governor: Prohibit discrimination under the Wisconsin Fair Housing Law, the housing authorities law, the housing authority for elderly persons law, the urban redevelopment law, the blighted area law, and the blight elimination and slum clearance act based on whether a person holds, or has applied for, a registry identification card, has been the subject of a written certification, or is or has been a member of a treatment team.

Further, require that the Wisconsin Housing and Economic Development Authority prohibit discrimination by any housing development receiving its assistance based on whether a person holds, or has applied for, a registry identification card, has been the subject of a written certification, or is or has been a member of a treatment team.

Joint Finance/Legislature: Delete provision.

D. General Fund Taxes -- Sales and Use Taxes

Impose Sales Tax on Medical Marijuana

Governor: Impose the state sales and use tax on retail sales of cannabis and tetrahydrocannabinols procured from a licensed dispensary (medical marijuana).

Under current law, an exemption is provided from the general sales and use tax for retail sales of prescription drugs. The provision would specify that this exemption does not apply for sales of medical marijuana. As a result, such sales would be subject to sales tax. The provision would take effect on the effective date of the bill. The administration estimates the provision would increase state tax revenues by $252,100 in 2019-20 and $504,200 in 2020-21 and annually thereafter.

Joint Finance/Legislature: Delete provision.

E. General Fund Taxes -- Excise Taxes and Other Taxes

Dispensary Surcharge on Sales Of Medical Marijuana

Governor: Impose a surcharge at the rate of 10 percent of the total price of medical marijuana sold or otherwise dispensed by a dispensary licensed by DATCP to an unrelated person, including any charge by the dispensary that is necessary to complete the sale (dispensary surcharge). A dispensary would be considered related to another person if the two entities: (a) have significant common purposes and substantial common membership; or (b) directly or indirectly, have substantial common direction or control.

a. Determination of Total Price and Sale Restrictions. Under the bill, the total price subject to the dispensary surcharge could not be reduced by costs or expenses incurred by the dispensary, such as fees, delivery, freight, transportation, packaging, handling, marketing, taxes, and import fees or duties, regardless of whether such costs or expenses are separately stated on the invoice. The total price also could not be reduced by the value or cost of discounts or free promotional or sample products. A dispensary could not state the dispensary surcharge separately on an invoice or other similar document given to the purchaser or recipient of medical marijuana, and could not sell or otherwise dispense medical marijuana without first obtaining a business tax registration certificate from the Department of Revenue (DOR), as prescribed under current law.

b. Maintenance of Records and Returns. The bill would require every dispensary to keep accurate and complete records, in the manner prescribed by DOR, of all transactions involving the sale or disposition of medical marijuana. A dispensary would have to preserve all its records on the premises described in its business tax registration certificate in a manner sufficient to ensure the records' permanency and accessibility for inspection at reasonable hours by authorized DOR personnel. DOR would be allowed under the bill to inspect the business records of any dispensary doing business on a reservation or on an Indian tribe's trust land.

Each dispensary would be required to render a true and correct invoice of every sale and disposition of medical marijuana and, on or before the 15th day of each calendar month,

electronically file a verified report of all such sales and dispositions during the preceding calendar month. Each dispensary would have to collect and remit the dispensary surcharge together with the reports required by DOR.

Under the bill, DOR would have to prescribe reasonable and uniform methods for recordkeeping and making reports, and would have to prescribe and furnish the necessary report forms. If any dispensary fails to file a report when due, it would have to pay a late filing fee of $50. In addition, if DOR finds that the records of any dispensary are not kept in the prescribed form or are in such condition that an unusual amount of time is required to determine from them the amount of dispensary surcharge due, DOR would have to give notice of such fact to the dispensary and require that the dispensary revise its records and maintain them in the prescribed form. If the dispensary fails to comply with these recordkeeping requirements within 30 days, it would be required to pay the expenses reasonably attributable to a proper examination and pay for the surcharge determination at the rate of $30 per auditor per day. DOR would have to send a bill for the related expenses, and the dispensary would have to pay the amount of the bill within 10 days.

c. Confidentiality Provisions. The provisions relating to confidentiality of income and franchise tax returns that apply under current law would apply under the bill to any information obtained from: (a) any person on a dispensary surcharge return, report, schedule, exhibit, or other document; or (b) an audit report pertaining to the return, report, schedule, exhibit, or document. The exception to this provision would be that DOR would have to publish on its Internet site, at least quarterly, a current list of business tax registration certificates issued to dispensaries and would have to include on the list the name and address of the certificate holder and the date on which DOR issued the certificate.

d. Administrative Provisions. The provisions that apply to the cigarette tax under current law regarding appeals, other refunds, seizure and confiscation, and administration and enforcement would also apply to the dispensary surcharge. If a dispensary fails to pay the surcharge, authorized DOR personnel could search the premises of the dispensary, with the assistance of any law enforcement officer within his or her jurisdiction, to seize any personal property or cash for payment of the unpaid surcharge. Duly authorized DOR employees would have all necessary police powers to prevent violations concerning the surcharge. The provisions on timely filing as they apply to income and franchise taxes under current law would apply to the surcharge, and the provisions regarding the placement of security bonds to insure tax liability as they apply to the motor vehicle fuel tax under current law would apply to the surcharge.

e. Interest and Penalties. Several current law provisions on interest and penalties, as they govern the cigarette tax, would apply to the dispensary surcharge under the bill. These include penalties for: (a) filing false or fraudulent reports; (b) failing to maintain required records; (c) refusing to permit authorized examinations or inspections; and (d) violating DOR rules. These also include interest provisions that state: (1) unpaid taxes bear interest at the rate of 12 percent per year, and refunded taxes bear interest at three percent per year; (2) all non-delinquent payments of additional amounts owed are applied first to penalties, then to interest, then to tax principal; (3) delinquent taxes bear interest at the rate of 1.5 percent per month; and (4) if a return is filed incorrectly due to neglect, the entire tax due is subject to a penalty of 25 percent of the entire tax,

exclusive of interest or other penalties. Moreover, any person who violates the bill's provision on collection and remittance of the surcharge could be fined not more than $10,000 or imprisoned for not more than nine months or both.

If a person fails to file any return or report required under the bill by the due date, unless the person shows that the failure was owing to reasonable cause and not to neglect, DOR would have to add to the amount of the surcharge required to be shown on that return five percent of the amount of the surcharge if the failure is for not more than one month, and an additional five percent of the surcharge for each additional month or fraction of a month during which the failure continues, but not more than 25 percent of the surcharge. The amount of the surcharge required to be shown on the return would be reduced by the amount of: (a) surcharge that is paid on or before the due date; and (b) any credit against the surcharge that may be claimed on the return.

f. Personal Liability Provisions. Any officer, employee, fiduciary, or agent who is responsible for paying the dispensary surcharge and any interest, penalties, or other related charges incurred by another person (where person is defined under current law governing the general sales and use tax) is personally liable for the surcharge and any interest, penalties, or other related charges. The procedures for petitions and appeals as they apply to income or franchise tax assessments under current law also would apply to appeals of surcharge assessments.

g. Prosecutions and Rulemaking Authority. Upon request by the Secretary of DOR, the Attorney General may represent Wisconsin or assist a district attorney in prosecuting any case regarding the dispensary surcharge. In addition, DOR would be required to promulgate any rules necessary for the administration of the surcharge, including emergency rules. Notwithstanding current law provisions that limit the time during which an emergency rule is effective, the bill would stipulate that emergency rules concerning the surcharge would remain in effect until January 1, 2023, or the date on which permanent rules take effect, whichever is sooner. Moreover, DOR would not be required to provide: (a) evidence that promulgating an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare; or (b) a finding of emergency for the promulgation of an emergency rule.

h. Revenues. These provisions would take effect on the effective date of the bill. The administration estimates the dispensary surcharge would increase state tax revenues by $504,200 in 2019-20 and $1,008,300 in 2020-21 and annually thereafter.

Joint Finance/Legislature: Delete provision.

F. Criminal Procedure and Process

1. Marijuana Ordinance Violations

Governor: Modify statutory language to prohibit a county board or municipality from enacting and enforcing an ordinance to criminalize the possession of 25 grams of marijuana or less. Under current law, county boards and municipalities may enact and enforce ordinances to prohibit the possession of marijuana in any amount (excluding cannabinol in a form without psychoactive effect that is dispensed by an approved pharmacy or physician or possessed with proper certification, or THC contained in fiber produced from the stalks, oil, or cake made from

the seeds of a cannabis plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, cake, or the sterilized seed of a cannabis plant incapable of germination), and provide a forfeiture for a violation of the ordinance, except that an individual may not be prosecuted for an ordinance violation if a complaint is issued regarding an allegation of possession of more than 25 grams of marijuana, or possession of more than 25 grams of marijuana (as modified under the bill) following a Wisconsin conviction for possession of marijuana, unless the charges for violating the state statute are dismissed or the district attorney declined to prosecute the case (for county and municipality ordinances) and the city, village, or town with jurisdiction over the action has no ordinance enacted in effect, has declined to prosecute the case, or has the charges dismissed (for county ordinances).

Create statutory language to exempt an individual from prosecution for a county or municipal ordinance violation of possession or attempted possession of more than 25 grams of marijuana or more than two plants containing THC if the individual can raise a valid medical use defense. Create statutory language to exempt an individual from prosecution for a county or municipal ordinance violation of use of drug paraphernalia or possession with the primary intent to use drug paraphernalia, delivery, possession with intent to deliver, or manufacture with intent to deliver drug paraphernalia, or delivery of drug paraphernalia to a minor, if the individual can raise a valid medical THC defense or the individual is an employee of a licensed dispensary or testing laboratory, complying with statutory operating procedures and rules, acting in good faith under the medical cannabis laws.

Create statutory language to exempt an individual from prosecution for a county or municipal ordinance violation of possession or attempted possession of more than 25 grams of marijuana or more than two plants containing THC if, unless or the individual is unable to raise a valid medical use defense, the individual is a member of a qualifying patient's treatment team, possessing or possessing with intent to manufacture, distribute, or deliver THC or a THC analog, if all of the following apply: (a) the member manufactures, distributes, delivers, or possesses THC for medication with THC by the treatment team; (b) the member possesses a valid registry identification card, out-of-state registry identification card, or a copy of the qualifying patient's written certification; (c) the quantity of cannabis does not exceed the maximum amount of cannabis allowed by statute; (d) any live cannabis plants are in a lockable, enclosed facility, unless the member is accessing the plants or has the plants in his or her possession; and (e) the member is not a primary caregiver to more than 10 qualifying patients, or, if the individual is an employee of a licensed dispensary or testing laboratory, complying with statutory operating procedures and rules, acting in good faith under the medical cannabis laws.

Joint Finance/Legislature: Delete provision.

2. Medical Cannabis Defenses, Definitions, and Limitations on Arrest and Prosecution

Governor: In connection with limitations on arrest and prosecution for medical cannabis, utilize the following statutory definitions related to medical cannabis created under the bill: (a) lockable, enclosed facility; (b) maximum authorized amount; (c) medication with tetrahydrocannabinols; (d) out-of-state registry identification card; (e) primary caregiver; (f) qualifying patient; (g) registry identification card; (h) treatment team; and (i) written certification.

Create statutory language to allow a member of a qualifying patient's team or a practitioner to avoid arrest or prosecution for violation of certain THC offenses, and provide a penalty for false statements in relation to those offenses, as follows:

a. Possession or Possession with Intent to Manufacture, Distribute, or Deliver THC. Unless a member of a qualifying patient's treatment team cannot assert the medical use defense, a member of a qualifying patient's treatment team may avoid arrest or prosecution for possession or possession with intent to manufacture, distribute, or deliver THC or a THC analog, if all of the following apply: (a) the member manufactures, distributes, delivers, or possesses THC for medication with THC by the treatment team; (b) the member possesses a valid registry identification card, out-of-state registry identification card, or a copy of the qualifying patient's written certification; (c) the quantity of cannabis does not exceed the maximum amount of cannabis allowed by statute; (d) any live cannabis plants are in a lockable, enclosed facility, unless the member is accessing the plants or has the plants in his or her possession; and (e) the member is not a primary caregiver to more than 10 qualifying patients.

b. Drug Paraphernalia Use or Possession with Intent to Use. Unless a member of a qualifying patient's treatment team cannot assert the medical use defense, a member of a qualifying patient's treatment team may avoid arrest or prosecution for drug paraphernalia use or possession with the primary intent to use to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or controlled substance analog, if the member uses, or possesses with the primary intent to use, drug paraphernalia only for medication with THC, and if the member satisfies the qualifications of (b) to (e), above.

c. Drug Paraphernalia Manufacture or Delivery. Unless a member of a qualifying patient's treatment team cannot assert the medical use defense, a member of a qualifying patient's treatment team may avoid arrest or prosecution for drug paraphernalia delivery, possession with intent to deliver, or manufacture with intent to deliver, knowing that it will be primarily used to plant, propagate, cultivate, grow, harvest, manufacture compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or controlled substance analog, if the member delivers, possesses with intent to deliver, or manufactures with intent to deliver to another member of his or her treatment team, drug paraphernalia, knowing that it will primarily be used by the treatment team for medication with THC, and if the member satisfies the qualifications of (b) to (e), above.

Specify that a practitioner may not be arrested and a practitioner, hospital, or clinic may not be subject to prosecution, denied any right or privilege, or penalized in any manner for making or providing a written certification in good faith. Further, specify that an employee of a licensed dispensary or testing laboratory, complying with statutory operating procedures and rules, may not be arrested, prosecuted, denied any right or privilege, or penalized in any manner for any good faith action under the medical cannabis laws.

Establish a penalty of not more than a $500 fine for intentionally providing false information to a law enforcement officer in an attempt to avoid arrest or prosecution in the circumstances

identified above for violation of certain THC and drug paraphernalia offenses.

d. Defenses. Create statutory language that allows for a member of a qualifying patient's treatment team to assert a defense to prosecution for manufacturing or possessing with intent to manufacture THC, if all of the following apply: (a) the manufacture or possession is by the treatment team for medication with THC; (b) the amount of cannabis does not exceed the maximum authorized amount; (c) any live cannabis plants are in a lockable, enclosed facility unless a member of a qualifying patent's treatment team is accessing the plants or has the plants in his or her possession; and (d) the member is not a primary caregiver to more than 10 qualifying patients.

Create statutory language that allows for a member of a qualifying patient's treatment team to assert a defense to prosecution for distribution or delivery, or possession with intent to distribute or deliver, THC to another member of the treatment team if the distribution, delivery, or possession is by the treatment team for medication with THC, and if the member satisfies the qualifications of (b) to (d), above.

Create statutory language that specifies a member of a qualifying patient's treatment team has a defense to prosecution for possession or attempted possession of THC if the possession or attempted possession is by the treatment team for medication with THC, and if the member satisfies the qualifications of (b) to (d), above. Create an exception for this statutory provision to assert that a person may not raise a medical use defense if, while he or she possesses or attempts to possess THC, any of the following applies: (a) the person drives or operates a motor vehicle while under the influence of THC; (b) the person operates heavy machinery or engages in any other conduct that endangers the health or well-being of another person while under the influence of THC; (c) the person smokes cannabis in, on, or at any of the following places - a school bus, public transit vehicle, the person's place of employment, public or private school grounds, a correctional facility, a public park, beach, or recreation center, or a youth center.

Create statutory language that specifies a valid registry identification card, a valid out-of-state registry identification card, or a written certification is presumptive evidence that the person identified on the card as a qualifying patient or the subject of the written certification is a qualifying patient and that, if the person uses THC, he or she does so to alleviate the symptoms or effects of a debilitating medical condition or treatment. This is an exception to current law, which specifies that it is not necessary for the state to disprove any exemption or exception in the Uniform Controlled Substances Act in any complaint, information, indictment, or other pleading in any trial, hearing, or other proceeding under the Act, and that the burden of proof for any exemption or exception is on the person claiming the exemption or exception.

Create statutory language that specifies a member of a treatment team has a defense to prosecution for possession of drug paraphernalia if he or she uses, or possesses with the primary intent to use, drug paraphernalia for medication with THC. This section does not apply if, while the persons uses or possesses with the primary intent to use drug paraphernalia, the person does not meet the qualifications for the medical use defense.

Create statutory language that specifies a member of a treatment team has a defense to prosecution for delivery, possession with intent to deliver, or manufacture with intent to deliver

drug paraphernalia, or delivery of drug paraphernalia to a minor, if he or she delivers, possesses with intent to deliver, or manufactures with intent to deliver drug paraphernalia to another member of his or her treatment team, drug paraphernalia, knowing that it will be primarily used by the treatment team for medication with THC.

Create statutory language that allows any person to petition the Department of Health Services to promulgate a rule to designate a medical condition or treatment as a debilitating medical condition or treatment. Upon petition, the Department will promulgate rules and provide public notice, comment, and a hearing. The Department is required to approve or deny the petition no later than 180 days after the submission of the petition. The decision is subject to judicial review.

Create statutory language to specify that a person who was in possession of seized property when it was seized has a defense to the forfeiture of the property if any of the following apply: (a) the person was prosecuted for a marijuana-related offense but can assert a valid medical use defense in cases involving THC or valid medical THC defense in drug paraphernalia cases; or (b) the person was not prosecuted for the marijuana-related offense in connection with the seized property, but if the person had been, he or she could assert a valid medical use defense in cases involving THC or valid medical THC defense in drug paraphernalia cases. If the owner of the seized property raises a defense in answering the complaint, the state must prove that the facts constituting the defense do not exist. This is an exception to current law, which specifies that it is not necessary for the state to disprove any exemption or exception in the Uniform Controlled Substances Act in any complaint, information, indictment, or other pleading in any trial, hearing, or other proceeding under the Act, and that the burden of proof for any exemption or exception is on the person claiming the exemption or exception.

Joint Finance/Legislature: Delete provision.

3. Probable Cause Determination for Medical Cannabis

Governor: Create statutory language that specifies a person's possession, use, or submission of or connection with an application for a registry identification card, the issuance of such a card, or a person's possession of such a card, a valid out-of-state registry identification card, or an original or a copy of a written certification authorized by statute, may not, by itself, constitute probable cause or otherwise subject any person or the property of any person to inspection by any governmental agency.

Joint Finance/Legislature: Delete provision.

4. Seized Property

Governor: Modify statutory language to specify that a law enforcement agency that has seized a live cannabis plant is not responsible for the plant's care and maintenance. Aside from the created exception, current law remains that property seized under a search warrant or validly seized without a warrant will be safely kept by the officer, who may leave it in the custody of the sheriff and take a receipt, so long as necessary for the purpose of being produced as evidence in any trial.

Modify statutory language to remove the exemptions for property a court is required to

return to the owner (including animals held for cause, firearms and other dangerous weapons, ammunition, and certain evidence) once right of possession is proved to the court's satisfaction and the court finds at least one of the following: (a) it is likely that the final judgement will be that the state must return the property to the claimant and the property is not reasonably needed as evidence or for other investigatory reasons or, if needed, satisfactory arrangements can be made for its return for subsequent use; (b) the property is the only reasonable means for a defendant to pay for legal representation in the forfeiture or criminal proceeding, the property is not likely to be needed for payment of victim compensation, restitution, or fines, and the property is not reasonably needed as evidence or for other investigatory reasons. If the court makes this finding, it may order the return of funds or property sufficient to obtain legal counsel but less than the total amount seized and require an accounting; and (c) all proceedings and investigations in which it might be required have been completed.

Create statutory language that specifies the return of seized property does not apply to held animals for cause, firearms and other dangerous weapons, ammunition, animal fighting, and certain evidence, except that the court may return seized drug paraphernalia or THC if the person from whom drug paraphernalia or THC was seized can assert a medical use defense in THC cases or medical THC defense in drug paraphernalia cases. [Note that the exception for animal fighting was inadvertently included in this section of the bill.]

Create statutory language that clarifies "drug paraphernalia" and "tetrahydrocannabinols" have the same meaning under the Governor's budget bill as was given for these terms in existing Chapter 961 of the statutes.

Create statutory language that adds a valid registry identification card, valid out-of-state-registry identification card, or written certification to the list of items constituting authority to avoid seizure and forfeiture. Under current law, a person in occupancy or control of land or premises upon which species of planted or cultivated plants from which schedules I and II controlled substances may be derived, must produce proof that the person is a holder of appropriate federal registration or proof that the person is growing or storing plants in accordance with industrial help requirements, upon demand by any officer or law enforcement employee, to avoid forfeiture and seizure of the plants.

Joint Finance/Legislature: Delete provision.

2. DECRIMINALIZATION, EXPUNGEMENT, AND DISMISSAL OF CERTAIN MARIJUANA OFFENSES

Governor: Modify current law related to certain marijuana offenses, as follows:

a. Penalties for Marijuana -- 25 grams or Less. Remove the statutory penalties for possession, possession with intent to manufacture, distribute, or deliver, and distribution or delivery of marijuana in amounts of 25 grams or less or two plants containing tetrahydrocannabinols (THC) or less. Under current law, it is a Class I felony (maximum sentence of 18 months in prison and two years extended supervision) to possess, possess with intent to manufacture, distribute, or deliver, and to distribute or deliver marijuana in amounts of 200 grams

or less or four or fewer plants containing THC.

Modify statutory language to specify that persons who possess or attempt to possess more than 25 grams of THC or a THC analog may be fined not more than $1,000 or imprisoned not more than six months, or both, for a first-offense, and are guilty of a Class I felony for a second or subsequent offense. Modify statutory language to specify that persons who manufacture, distribute, or deliver marijuana in amounts of more than 25 grams but not more than 200 grams, or more than two but not more than four plants containing THC, are guilty of a Class I felony. Under current law, any amount of THC or THC analog, including amounts of 25 grams or less, is subject to the penalty structure described, above.

Create statutory language to specify that a person who is at least 17 years old and distributes or delivers marijuana in amounts of 25 grams or less or two plants containing THC or less to a person who is no more than 17 years old and who is at least three years younger than the person distributing or delivering is guilty of a Class I felony. This would be an exception to current law, which specifies that a person 17 years of age and over, distributing or delivering a controlled substance or controlled substance analog to a person 17 years of age or under who is at least three years his or her junior, may have his or her maximum term of imprisonment sentence increased by five years or less.

b. Probable Cause and Weight for Marijuana Offenses. Repeal the statutory title, "penalty relating to tetrahydrocannabinols in certain cases" and recreate the title to read "tetrahydrocannabinols penalty and probable cause."

Create statutory language that would prohibit establishing probable cause that a person is violating a THC offense or THC analog offense by an odor of marijuana or by the possession of not more than 25 grams of marijuana. Specify that an individual on parole, probation, extended supervision, supervised release, or any other release may not be revoked for possessing 25 grams of marijuana or less.

Modify statutory language to provide that only the weight of the marijuana may be considered when determining the weight or amount of tetrahydrocannabinols. Under current law, the weight or amount of THC or THC analog means the weight of the THC or THC analog together with any compound, mixture, diluent, plant material, or other substance mixed or combined with the THC or THC analog. In addition, current law specifies that THC means any form of THC (including THC contained in marijuana, obtained from marijuana, or chemically synthesized, except that THC does not include cannabinol in a form without psychoactive effect that is dispensed by an approved pharmacy or physician or possessed with proper certification, or THC contained in fiber produced from the stalks, oil, or cake made from the seeds of a cannabis plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, cake, or the sterilized seed of a cannabis plant incapable of germination) and includes the weight of any marijuana.

c. Expungement or Dismissal of Certain Marijuana Convictions. Create statutory language that allows a person serving a sentence or on probation to request dismissal or expungement of marijuana-related convictions if the sentence or probation period was imposed for a conviction on a tetrahydrocannabinols violation and the person proves to the court that it is more

likely than not that the amount of marijuana involved was 25 grams or less, or two plants containing THC or less (if applicable). Expungement and dismissal are not defined under the bill. However, as generally understood, expungement is the removal of a conviction from a person's criminal record, while dismissal is the termination of a conviction, or the termination of an action or claim without further hearing. Offenses to which this provision would apply include felony manufacture, distribution, or delivery, felony possession with intent to manufacture, distribute, or deliver, and misdemeanor or felony possession.

Establish a process for dismissal or expungement whereby an eligible person may file a petition with the sentencing court to request dismissal or expungement of the conviction. If the court receiving a petition determines that the person is eligible for dismissal or expungement, the court may grant the petition with or without a hearing. If a hearing is scheduled, the court would be required to grant the petition, unless the person cannot prove the amount of marijuana involved was 25 grams or less or the court determines that dismissal of the conviction presents an unreasonable risk of danger to public safety.

Create statutory language to specify that a marijuana conviction that has been expunged or dismissed is not considered a conviction under state or federal law, including for the purpose of possession of a firearm.

Joint Finance/Legislature: Delete provision.